IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.42 of 2001

Decided on : November 3, 2006

New India Assurance Company **…..Appellant.**

VERSUS

Goverdhan Dass and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. K.D. Sood, Advocate.**

For the Respondents : **Mr. Lovneesh Kanwar, Advocate, for respondent No.1.**

Mr. B.K. Malhotra, Advocate, for respondent No.2.

Mr. Vikaram Singh, Advocate, for respondent No.3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. The Insurance Company has filed this appeal, challenging the award of the Motor Accident Claims Tribunal, whereby liability for payment of compensation awarded for the injuries received by respondent Goverdhan in an accident of a tractor, owned by respondent Premu, has been fastened upon it.

3. Respondent Goverdhan, hereinafter called claimant, filed a petition seeking award of compensation for the injuries sustained by him in an accident. It was alleged that the tractor was being driven by one Meera @ Paras Ram at the time when the accident took place and that the cause of the accident was rash or negligent driving of the tractor.

Whether the reporters of the local papers may be allowed to see the Judgment?

Premu, respondent, hereinafter called insured, took the plea that the vehicle was being driven not by Meera @ Paras Ram but one Khub Ram, whom he had employed to drive the tractor. Appellant took the plea that the driver of the tractor did not possess a valid and effective driving license and, thus, there was breach of condition of policy as to the person entitled to drive the vehicle and, therefore, it (the appellant) was not liable to pay the compensation.

4. The Tribunal, after holding inquiry, concluded that the accident took place due to rash or negligent driving of the tractor by Khub Ram and that said Khub Ram held a valid driving license to drive the tractor. The Insurance Company had taken another plea, viz. the claimant was a gratuitous passenger. This plea also did not find favour with the Tribunal. With the aforesaid findings, the Tribunal awarded compensation in favour of the claimant and ordered the insured and the present appellant (Insurance Company) to pay the amount of compensation.

5. Award has been challenged on the grounds that the finding of the Tribunal that the vehicle was being driven by Khub Ram is contrary to the evidence and the pleadings and that the material on record establishes to the hilt that the tractor was being driven by Meera, who, admittedly, did not possess a license to drive it. Another point raised by the appellant-insurer is that the claimant was on board the tractor, as a gratuitous passenger.

6. I have heard the learned counsel for the parties and gone through the record.

7. As already noticed, while summarizing the facts, the claimant very specifically pleaded that the vehicle was being driven at

the time of the accident by respondent Meera. While in the witness box also as PW-1, the claimant, in no uncertain terms, stated that the vehicle was being driven by Meera respondent. He denied the suggestion put to him in the cross-examination by the insured that it was being driven by Khub Ram. When cross-examined by the counsel for the Insurance Company, he admitted that Meera was driving the tractor.

8. Insured himself appeared as RW-1 and also examined Meera and Khub Ram to controvert the appellant's and claimant's plea that the vehicle was being driven by Meera. His own testimony as RW-1 is that on the fateful day, he deputed Khub Ram, whom he had employed as driver to drive the tractor, and claimant Goverdhan to fetch bricks from a kiln, which he required for construction of a *danga*. He also stated that besides Goverdhan, he had employed Meera for the construction of the *danga*. From his testimony, it can legitimately be deduced that what he intended to say is that he had engaged two labourers for the construction of *danga* and that out of those two labourers he deputed one, namely claimant Goverdhan, for loading the bricks at the kiln, while the other labourer, namely Meera, remained at the site of the construction of the *danga.* Meera, who was examined as RW-2, denied that he was driving the tractor at the relevant time. Khub Ram, RW-3, stated that it was he who was driving the tractor when the accident took place. During the course of inquiry by the Tribunal, one police official, namely RW-5, was examined, probably by the appellant. This witness testified that the FIR pertaining to the accident, in question, was lodged by Goverdhan claimant, in which Meera was named as driver. The witness also stated that he recorded the statement of Premu, the owner of the tractor, under Section 161 Cr.P.C., and in the

said statement Premu got recorded that the tractor was being driven by Meera. He also stated that case for rash or negligent driving has been instituted on the basis of the aforesaid FIR against Meera.

9. The above discussed evidence, particularly the statement of Government claimant examined as PW-1, which is duly corroborated by the contents of the FIR Ex. PW-3/A, conclusively proves that the vehicle at the relevant time was being driven not by Khub Ram, as alleged by the insured, but by Meera respondent, who, per his own deposition, did not possess the license to drive the tractor.

10. Learned counsel for the insured, placing reliance upon a judgment of the Hon'ble Supreme Court in ***(2004) 3 Supreme Court Cases 297, National Insurance Co. Ltd. Versus Swaran Singh and others,*** has urged that besides pleading and proving that the person, who was driving the tractor, did not possess a valid license, the insurer was supposed to have pleaded and proved that the tractor was being driven by the said person with the knowledge of the insured. The argument is without merit. The insured himself specifically testified that on the relevant day he had engaged two labourers, namely Goverdhan claimant and Meera respondent, and that he deputed Goverdhan claimant with the tractor, which was being driven by Khub Ram, for fetching bricks from the kiln, meaning thereby that the other labourer engaged by him, namely Meera, remained with him at the site of the construction of *danga,* but this testimony is proved to be false not only by the statement of claimant Goverdhan but also the fact that if Meera remained on the spot, as claimed by the insured, how could he have been in the driver's seat at the time when the accident took place. The testimony of Goverdhan and the fact that the insured's statement

regarding Meera being at the site of the *danga* is false clearly establish that it was insured himself, who required Meera to drive the tractor to the kiln in the company of the claimant for fetching bricks. Thus, from insured's own showing, it is made out that the breach of the condition of the policy regarding the persons, who were authorized to drive the vehicle, took place not only to his knowledge but also at his instance. From the evidence, it is absolutely clear that the insured has cooked up a false story that Khub Ram was the driver to avoid his liability for payment of compensation and to fasten the liability on to the insurer.

11. As regards the second contention, the learned counsel conceded that the policy was subject to IMT-17, which is supposed to cover the risk of the employees engaged by the insured.

12. As a result of the above discussion, appeal is accepted. Award of the learned Tribunal is modified to the extent that the liability for payment of the compensation shall be that of the insured instead of the insurer. It is, however, clarified that the compensation money which has already been deposited by the Insurance Company for being paid to the claimant and a portion whereof stands released to the claimant shall be paid to the claimant and the insurer shall be entitled to recover the said money from the insured by executing this order.

13. Appeal stands disposed of.

November 3, 2006(sd) **(Surjit Singh), J.**